

Subject: Re: Checking in: Wisconsin
From: "Marni Goldberg" [REDACTED]
Received(Date): Fri, 08 Dec 2023 16:42:40 +0000
To: "Carson Oliver" [REDACTED]
Cc: "Jennifer Brown" [REDACTED], "Peter Ajemian"
[REDACTED], "Hannah Smith"
[REDACTED], "Adam Dema" [REDACTED]
Date: Fri, 08 Dec 2023 16:42:40 +0000

Thank you so much.

On Dec 8, 2023, at 11:38*AM, Carson Oliver [REDACTED] wrote:

Privileged and Confidential

Thanks, Marni. These materials looks good and are consistent with our current plan of record. However, there is a chance that plan may change to align with potential changes to [REDACTED]. We should have a better idea of that by the end of December.

Jen, please let me know if I 've missed anything from a legal perspective.

Carson

On Dec 7, 2023, at 11:24*AM, Marni Goldberg [REDACTED] wrote:

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Carson and Jen,

I hope you are doing well! As we await the Supreme Court's decision on whether to take up the Epic appeal, we wanted to re-surface our PR plan and materials for when the External Purchase Link Entitlement may go live.

We understand that the earliest we could receive a result at this time is January 16. My understanding is that if we are denied by the court, we will plan to comply on 11:59 p.m. (Eastern Time) on the 16th. **Jen, can you confirm that is correct?**

Outlined below is our plan of record from July. The timing will shift depending on when we need to comply with the order, but our intention is to ensure people get the facts straight right out of the gate.

—As the developer-facing documents are posted and legal documents are filed, we plan to brief the three Apple blogs. The briefing, led by Jen and Carson, would be off the record and we would point reporters to public documents for their sourcing. We had



originally planned for this to take place at 11 p.m. PT the night before the External Purchase Link Entitlement goes live.

—We would conduct two separate briefings (originally planned for early the following morning) with two developers — Dave Barnard (RevenueCat) and Dave Verwer (iOSDevWeekly). Both are highly-respected within the developer community and serve as a source of knowledge when we make business changes such as these.

—Once we are “live,” Jen and Carson will be ready and able to brief additional reporters on an as-needed basis.

Below, I have included the Q&A we put together in partnership with your teams this summer to guide these discussions. As you’ll recall, the language is largely sourced from the legal and developer-facing documentation the team has developed. This approach is intentional, since this remains active litigation.

Additionally here is the latest version of the deck from this summer: [REDACTED] —

We would be most grateful if you all can review these materials and let us know if 1) there have been any changes to our compliance plan, and 2) if any changes to the materials are needed for accuracy.

Many thanks in advance!

Reactive Q&A

General

What changes is Apple making to its rules?

Starting today, because of a recent United States Court decision, App Store Review Guideline 3.1.1 has been updated to introduce the StoreKit External Purchase Link Entitlement (US), which allows apps that offer in-app purchases on the United States iOS or iPadOS App Store the ability to include a link to the developer’s website that informs users of other ways to purchase digital goods or services. (*N&A under StoreKit and review guideline update*)

Why are you making these changes now?

You may recall that Apple won a resounding victory in the Epic case, with nine of 10 claims having been decided in Apple’s favor. While we are introducing this change pursuant to the state law claim in that decision, we continue to believe Apple’s in-app purchase system is the most convenient and secure way for users to purchase digital goods and services.

How will these changes impact users?

In apps that include a link to the developer's website to purchase digital goods and services, users will have the choice between using Apple's IAP system or clicking a link that directs them to alternative, out-of-app purchasing mechanisms. Once a user leaves the App Store ecosystem via linking out, Apple will not be able to assist customers with refunds, purchase history, subscription management, and other issues encountered when purchasing digital goods and services. (*N&A under StoreKit and review guideline update*)

How will Apple continue to protect users and developers with these new rules in place?

Apple will require developers to adhere to certain requirements to qualify for and use the StoreKit External Purchase Link Entitlement **Addendum for US Apps** (the "Link Entitlement") These requirements are necessary to protect user privacy and security, maintain the integrity of the iOS ecosystem, promote the flow of information, avoid user confusion, enable efficient review of developers' apps by App Review, and guard against the uncompensated use of, among other things, Apple's platform, tools and services, and intellectual property. (*Statement of Compliance, page 4-5*)

These requirements serve a variety of purposes, but they all arise largely from the fact that an External Purchase Link encourages users to leave the app and the Apple ecosystem, and undertake a transaction on the open Internet. Apple has designed the App Store and iOS so that it can use established and predictable mechanisms to review apps for a variety of purposes, including protecting user security and privacy and deterring fraud and scams. Apple lacks similar capabilities with respect to transactions on the open Internet, as the Court recognized. (*Statement of Compliance, page 7*)

Why is this update only applicable to the U.S. storefront?

The court order is only applicable to the App Store in the United States.

Does Apple have plans to enable third-party payment systems globally?

We continue to believe Apple's in-app purchase system is the safest and most secure way for users to purchase digital goods and services.

Our priority is to protect and preserve the user experience and ensure the App Store remains a great business opportunity for developers across the globe. We follow the laws in the jurisdictions in which we operate, and in this case, the court order is only applicable to the App Store in the United States.

Will Apple reinstate Fortnite to the App Store now?

Apple has no obligation to reinstate Fortnite onto the App Store. In its September 2021 ruling, the Court found that Epic breached its agreement with Apple and that "Apple

has the contractual right to terminate its DPLA with any or all of Epic Games' wholly owned subsidiaries, affiliates, and/or other entities under Epic Games' control at any time and at Apple's sole discretion." P. 179

What will be the financial impact of these new rules?

We have no comment.

Will Apple seek further action from the appellate court?

In a [court filing](#) on July 3, Apple said it would ask the Supreme Court to take up its appeal of the 9th U.S. Circuit Court of Appeal's ruling.

Korea/Netherlands

This all sounds vaguely familiar? Where have you done this before?

— This is a unique case, but you are correct that there are other markets that require us to use alternative in-app payments other than IAP under specific laws or regulations.

—Those include both the Netherlands and Korea, but the circumstances in those markets are specific to their regulations and laws and do not reflect what is being required in this case, which is applicable to the U.S. only.

Korea:

—In Korea, a specific law was passed that allows apps that apps distributed in that country to offer alternative payment processing within their apps.

—In Korea the commission rate is 26 percent.

Netherlands:

—We have dating apps that are allowed to use in-app alternative payments OR link out to the web to alternative payments.

—In the Netherlands, eligible dating apps receive a 3% discount off the commission for IAP, which is 30% or 15%.

Why is the commission in Korea 26 percent vs. 27 percent in the Netherlands and the U.S.?

— These are different models so it's not an apples to apples comparison.

— With respect to the Korea and Netherlands commission reductions, these were reduced rates that exclude the value related to payment processing and related

activities.

Why not extend beyond dating apps in the Netherlands, now that you have gone further than that in the U.S.?

— We don't think that linking out is safe or the best experience for our customers. It potentially harms their privacy and security, both personal and financial. We think that our system is the best system and we want to support it worldwide. We don't want to put customers at any additional risk.

Why does Apple require that developers choose between IAP and a link-out in the Netherlands (and not in the U.S.)?

— We would prefer to have a global approach but are being required to do different things in different markets to comply with changing local laws and the decisions of local regulators.

Why do you have different regimes in different countries?

— We follow the laws, regulations and court decisions in all jurisdictions where we do business.

Developer-specific questions

How can developers take advantage of these new rules?

Developers may apply for the StoreKit External Purchase Link Entitlement (U.S.). Developers who are approved for the entitlement can include within their apps buttons or links directing users to out-of-app purchasing mechanisms other than IAP. Please visit XX for additional details. (*Statement of Compliance, page 5*)

Developers must continue to offer in-app purchases in accordance with the Developer Agreement and the App Store Review Guidelines. (*Statement of Compliance, page 7*)

Do developers have to be based in the U.S. to use the new entitlement?

No. This affects all apps available on the App Store in the U.S., regardless of where the developer is based.

Why are those who participate in the Video Partner Program or News Partner Program ineligible for the new entitlement?

The Video Partner Program and News Partner Program aim to deliver new, unique and seamless experiences on the Apple TV app and the News app. They require participating developers to deeply integrate with a set of Apple technologies to enhance the user experience, like search integration, single sign-on and IAP, which we continue to believe is the most convenient and secure way for users to purchase digital

goods and services. Participants receive economic benefits through the program for meeting the high user experience standards of these apps.

Video Partner Program

The Video Partner Program is designed for apps that deliver premium subscription video entertainment services. Participating apps are required to integrate with a number of Apple technologies, such as Universal Search, Siri, AirPlay, and single sign-on or zero sign-on, to ensure a seamless experience for customers.

As a program member, you earn 85% of sales from customers who sign up using Apple's in-app purchase system. You may also allow customers who subscribe using your payment method outside of the app to use that payment method for additional video transactions within the app. **You must enable in-app purchase to enjoy these economic benefits.**

As a result of this integration, these apps are featured on the Apple TV app and throughout tvOS, and their content is discoverable through Universal Search and Siri. (<https://developer.apple.com/programs/video-partner/>)

News Partner Program

The News Partner Program, designed for subscription news publications that provide their content to Apple News in Apple News Format. Publishers that work with Apple News may qualify for a commission rate of 15% on qualifying in-app purchase subscriptions from day one. The program is available to Apple Developer Program members globally. ([Apple Newsroom](#))

Is Apple updating its guidelines for this change? Which does it say?

Yes, App Store Review Guidelines 3.1.1 and 3.1.1(a) have been updated. See [here](#).

Which developers will benefit most from this change?

Developers have many ways of communicating offers and discounts for digital goods and services to users today. These changes add a new channel from within their app.

Commission

Will Apple still collect a commission on payments made outside the App Store?

The Court did not enjoin Apple's core business model of monetizing the App Store by charging a percentage commission rate on sales of digital goods and services facilitated by its platform. Instead, it found that "under all models, Apple would be entitled to a commission or licensing fee, even if IAP was optional." Ex. __ [Rule 52 Order], at 67; see also id. at 150 ("Even in the absence of IAP, Apple could still charge a commission on developers.").

Accordingly, in view of the substantial value Apple provides to developers including in facilitating linked transactions, Apple will charge a reduced commission on certain out-of-app digital purchases. (*Statement of Compliance, page 12*)

Apple will apply a 27% commission to transactions for digital goods and services that take place on a developer's website within seven days after a user taps through an External Purchase Link from the system disclosure sheet to an external website. (*Statement of Compliance, page 12*)

Many platforms charge a commission or other fee for similar transactions, with windows ranging from 24 hours to 30 days, or even longer. The App Store affords many more tools to developers than most online marketplaces, and one week appropriately credits Apple for facilitating linked transactions. (*Fischer Declaration, page 9*)

Why is Apple still collecting a commission on payments made outside the App Store/Is Apple now taxing web purchases?

The Court did not enjoin Apple's core business model of monetizing the App Store by charging a percentage commission rate on sales of digital goods and services facilitated by its platform. Instead, it found that "under all models, Apple would be entitled to a commission or licensing fee, even if IAP was optional." Ex. __ [Rule 52 Order], at 67; see also id. at 150 ("Even in the absence of IAP, Apple could still charge a commission on developers."). (*Statement of Compliance, page 12*)

Charging a limited commission on transactions facilitated by External Purchase Links not only complies with the Injunction's plain terms, but is also consistent with the Court's rationale for upholding Apple's other App Store policies. All App Store developers—including those who place buttons or links with calls to action in their apps—benefit from Apple's platform integrity, proprietary tools and technologies, developer services and support, services to help developers acquire and retain users through app discovery, and safe environment for users to download and purchase apps and in*app content. (*Statement of Compliance, page 12-13*)

Developers benefit from:

—Apple's "enormous" investment in "tools and features for iOS," including "thousands of developer tools, SDKs, and APIs" and Apple's "constant updating of . . . cellphones to allow for more sophisticated apps."

— "Access to Apple's vast consumer base" as well as "the safe environment created by the App Store" which encourages users to "download apps freely and without care." (*Statement of Compliance, page 13*)

With Citations:

Developers benefit from Apple's "enormous" investment in "tools and features for iOS" (Ex. __ [Rule 52 Order], at 113–14), including the "thousands of developer tools, SDKs, and APIs" and Apple's "constant updating of . . . cellphones to allow for more sophisticated apps." *Id.* At 67; *see id.* At 150 ("Apple is entitled to some compensation for use of its intellectual property.").

Developers also benefit from "access to Apple's vast consumer base" (Ex. __ [CA9 Op.], at 14), as well as "the safe environment created by the App Store" which encourages users to "download apps freely and without care." Ex. __ [Rule 52 Order], at 111; *see also id.* at 145 ("Apple provides a safe and trusted user experience on iOS, which encourages users and developers to transact freely and is mutually beneficial."); Ex. __ [CA9 Op.], at 58 (Apple's provision of a "safe and trusted user experience ... "increas[es] the per-user average number of app transactions.").

"[T]he developer's use of the App Store platform, license to Apple's intellectual property, and access to Apple's user base . . . justifies a commission." Ex. __ [Rule 52 Order], at 118; *id.* at 150 n.617 (developers should not be allowed to "avoid the commission while benefitting from Apple's innovation and intellectual property free of charge")

(Statement of Compliance, page 13)

How did Apple determine the commission rate on payments made outside the App Store?

All App Store developers—including those who place buttons or links with calls to action in their apps—benefit from Apple's proprietary technology and tools, intellectual property, and access to its user base. This includes Apple's investment in developer tools, SDKs, and APIs, and updates to the platform itself. Apple also provides a safe and trusted experience on its platform, in which users and developers transact freely.

Apple is charging a reduced commission on digital purchases initiated within seven days from link out. This will not capture all transactions that Apple has facilitated through the App Store, but reasonably accounts for the substantial value Apple provides developers, including in facilitating linked transactions. (*N&A under Commission, transaction reports, payments*)

Why is the commission only applicable for seven days ? How did Apple arrive at that time frame?

Many platforms charge a commission or other fee for similar transactions, with windows ranging from 24 hours to 30 days, or even longer. The App Store affords many more tools to developers than most online marketplaces, and one week appropriately credits Apple for facilitating linked transactions. (*Fischer Declaration, page 9*)

Undoubtedly, this window will not capture all transactions that Apple has facilitated

through the App Store, but it balances (1) Apple's entitlement to a commission for purchases facilitated through the App Store, even if the user waits a small amount of time after leaving the App Store to actually finalize the purchase, with (2) the fact that the longer the time between the link out and the purchase, the more attenuated the connection between the purchase and Apple's facilitation of the purchase. Through out *of*app communications (see *infra*), developers can encourage users to go directly to the website, without the use of an External Purchase Link and without incurring a commission. At all times, the user remains free to select whichever purchasing method they prefer. (*Statement of Compliance, page 13*)

How are you planning on complying with the DMA order on linking out?

We are continuing to evaluate how to implement solutions for DMA compliance.

If pressed: "DMA compliance is expected to start sometime in the first half of 2024."

Once the DMA is in effect, does Apple plan to collect a commission on apps installed through side loading?

We are continuing to evaluate how to implement solutions for DM

If pressed: "DMA compliance is expected to start sometime in the first half of 2024."

IAP

Will developers be allowed to use both IAP and an external link within their app?

Apps that include external links must continue to offer in-app purchases in accordance with the Developer Agreement and the App Store Review Guidelines. (*Statement of Compliance, page 7*)

Developers may not discourage end-users from making in-app purchases. (*Statement of Compliance, page 7*)

This requirement helps give developers a meaningful opportunity to "entice users to other platforms" (Ex. __ [Rule 52 Order], at 93), while also enabling users to make an informed choice between "the convenience of IAP" and out-of-app payment systems. (Ex. __ [Stay Order], at 4). (*Statement of Compliance, page 10*)

Reader apps may either maintain their status as reader apps or they must use IAP along with the Link Entitlement.

Why can the link out not be contained next to or within the IAP flow?

The requirements regarding placement of the External Purchase Links serve multiple purposes, including preventing users from being overloaded with duplicative information that might interrupt their app experience, ensuring a consistent user

experience, minimizing confusion between options, and reducing the risk of users inadvertently leaving the app. (*Statement of Compliance, page 10*)

They also prevent developers from free-riding on Apple's reputation for creating a "seamless" purchasing mechanism and protect Apple's right to require IAP for all in-app purchases, which the court did not enjoin. (*Statement of Compliance, page 10*)

How does this new entitlement affect those developers in the Small Business Program and those that offer auto-renewing subscriptions?

Developers eligible for and participating in the App Store Small Business Program will be charged a 12% commission on purchases made within seven days after a user taps on an External Purchase Link and continues from the system disclosure sheet to an external website. Id. ¶ 34. Auto*renewals in the second year or later of an auto *renewing subscription that was purchased within seven days after a user taps through an External Purchase Link from the system disclosure sheet will be charged a 12% commission. (*Statement of Compliance, page 12*)

Apple's in-app purchase rules require developers to offer users a way to restore their purchases. Will the same be required for external purchases?

We believe Apple's in-app purchase system is the most convenient, safe, and secure way for users to purchase digital goods and services. It's important to understand that Apple won't be able to assist customers with refunds, purchase history, subscription management, and other issues encountered when purchasing digital goods and services via a linked transaction. Developers will be responsible for addressing such issues with customers. (*N&A, StoreKit and review guideline update*)

Tough QA

I have to believe that cynics or antagonists of the App Store are going to say this is really a rouse, because charging 27 percent vs 30 percent is not going to make financial sense to developers. Hence, they are going to have to continue using IAP. Is that a fair accusation against Apple?

—We believe the discounted commission rate we have put into place — which is not 27 percent, but actually 12 percent for the vast majority of developers who qualify for the Small Business Program — is a reasonable commission for all of the tools, services and other support that Apple provides to all developers across its ecosystem.

—We believe we are requiring with what the court has requested of us — to facilitate out-of-app transactions through this entitlement.

—As a reminder the judge specifically said: "under all models, Apple would be entitled to a commission or licensing fee, even if IAP was optional."

Why are you making this so hard and so unattractive for developers?

- We disagree with the suggestions that this program is onerous.
- The system we have set up is easy to understand and consistent with how we approached similar requirements in different markets.
- More critically, anything we are doing that may feel onerous is directly tied to protecting the user experience that we have built around the App Store — that is what is most important for Apple. And the District Court recognized this important right.
- To the extent there is any friction (apply for entitlement, surface a system disclosure sheet warning page) — that is for the benefit of customers, to inform that they are going to an external website to make purchases and to clarify that Apple is not responsible for the privacy or security of purchases made on the web.

How would you respond to the allegation that these changes do not seem to comply with the spirit of what YGR said in her ruling?

- Let's be clear about what the judge said.
- She modified guidelines in the U.S. storefront and didn't provide replacement language.
- She maintained our ability to collect a commission on our intellectual property AND use IAP. We have done exactly what she asked for.

Do you think this is a big deal? If not, why did you appeal to the Supreme Court?

- We are taking advantage of every single legal avenue we have at our disposal. We will always avail ourselves of all legal remedies given our commitment to creating the best and safest possible experience for our users.

Marni Goldberg

